HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Appeal No.428 of 2006

Between:

K. Maruthi Mallikarjun Rao … Appellant

And

The Special Officer and Competent Authority,

Urban Land Ceiling, III Floor, Chandra Vihar,

Nampally, Hyderabad.

… Respondent

::JUDGMENT::

Counsel for the appellant: Sri Hari Sreedhar, Advocate

For Sri Tarlada Rajasekhar , Rao, Advocate

Counsel for the respondents: Government Pleader for Revenue

April 24, 2006

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated 31-3-2006 passed by the learned Single Judge whereby he dismissed the writ petition filed by the appellant for quashing notification dated 6-9-2005 issued by the respondent Under Section 10 (3) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act').

The appellant claims to have purchased 1000 square yards of land bearing Plot No.67 out of Survey No.45 (Part), Guttala Begumpet Village (Kavuri Hills), Hyderabad from
Sri K.V. Jaganmohan Rao, vide registered sale-deed dated
6-1-1990. He is said to have constructed a house in the year 2000 after obtaining permission from Serilingampally Municipality.

The appellant filed writ petition questioning the legality of notification dated 6-9-2005 issued by the respondent declaring that the land in question shall be deemed to have been acquired by the State Government and vested in it with effect from 15-9-2005 free from all encumbrances. In the affidavit filed by him, the appellant averred that surplus area case of his vendor, namely, Sri K.V.Jaganmohan Rao had been decided by the competent authority on 11-6-1982 and land measuring 15,596.72 square meters comprised in Survey No.45 (Part) of Guttala Begumpet Village was declared as excessive. Thereafter, notification under Section 10 (1) of the Act was issued on 29-8-1983. However, on an application filed by the land owner, the government, vide Memorandum dated 44593/UC-II(2)/89-1 dated 19-5-1989, granted exemption. Thereafter, Sri K.V. Jaganmohan Rao and other owners of land comprised in Survey No.45 (Part), 44 (Part), 45 and 46 obtained layout from the Hyderabad Urban Development Authority (HUDA) and sold parcels of land to various persons. The appellant pleaded that notification issued by the respondent under Section 10 (3) is per se illegal because while making a declaration of deemed vesting of the land in the State Government, the officer concerned overlooked the factum of exemption granted by the State Government, vide Memo dated 19-5-1989. Along with the writ petition, the petitioner annexed copies of Andhra Pradesh Gazette dated 6-9-2005, Memorandum dated 19-5-1989, order dated 11-6-1982 passed by the competent authority constituted under the Act, notification dated 29-8-1983 issued by the government inviting objections from the interested persons, sale-

deed dated
6-1-1990 and order dated 1-7-2000 vide which Commissioner, Serilingampalli Municipality granted permission to raise construction.

The learned Single Judge disposed of the writ petition at the admission stage by observing that the petitioner has got alternative remedies of filing objection against notification issued under Section 10 (3), and appeal against notification, if any, issued under Section 10 (3) of the Act. The relevant portion of the order of the learned Single Judge reads as under:

> "Against a notification issued by the competent authority under Section 10 (1) of the Act, a person, who is claiming to be in possession of the property which is not liable to be notified under the Act, will have a right to make objections under Section 10 (1)(ii) of the Act. On considering such objection, if the competent authority passes any order pursuant to the notification under Section 10 (3) of the Act, the petitioner will have a right of appeal as provided under Section 33 of the Act, to the Commissioner of Land Revenue. In view of the same, the petitioner, without filing any objections and exhausting the remedies available, cannot question the impugned notification straight away before this Court. In that view of the matter, time is granted to the petitioner for filing objections within two weeks from today and if the notification under Section 10 (3) of the Act is not been published pursuant to the notification issued under Section 10 (1) of the Act, the competent authority shall consider the objections to be filed by the petitioner and pass appropriate orders thereon. If the notification under Section 10 (3) of the Act has already been issued, the respondent shall intimate the issuance of such notification to the petitioner to enable him to file an appeal before the Commissioner of Land Revenue within the stipulated period. Status quo obtaining as on today with regard to the possession shall be maintained for a period of two weeks from the date of receipt of a copy of this order."

We have heard learned counsel for the parties. In our opinion, the order under challenge is liable to be set aside because the learned Single Judge disposed of the writ petition under an erroneous assumption that the notification impugned in the writ petition had been issued under Section 10 (1) of the Act and it was open to the petitioner to raise objection and also avail alternative remedy of appeal in the event of issue of notification under Section 10 (3). A reading of the documents annexed with the writ petition shows that various notifications issued by the competent authority under the Act were published in Andhra Pradesh Gazettee, Part II, Extra-ordinary dated 6-9-2005. Some of the notifications were issued under Section 10 (1)

while others were issued under Section 10 (3) of the Act. The notification concerning the appellant's property bears the date 31-8-2005 and it was issued under Section 10 (3), as is evident from the relevant extracts of the Gazette:

> "F1/180/82 – Notice is hereby given to all those concerned, that the land mentioned in the below given schedule, which was already notified and published in A.P. Gazette No.313, dated 29-8-1983 Part-II Miscellaneous Notification of interest to the public under sub-section (1) of Section 10 of the Urban Land (Ceiling and Regulation) Act, 1976, shall be deemed to have been acquired by the State Government and vested absolutely in the State Government free from all encumbrances with effect from 15-9-2005.

State	District	Mandal	Name of the owner or Regd. Holder or other person interested in land	Description of the property	Extent in Sq. mtrs.
(1)	(2)	(3)	(4)	(5)	(6)
A.P.	R.R. Dist.	Serilingampally	Sri K.V. Jagan-mohanraoR/o.Batchapeta,Machilipatnam, Krishna District	Vacant land in Sy.No.45/P of Guttala Begumpet Village	15,596.72

It appears that attention of the learned Single Judge was not drawn to the mixture of notifications published in the Gazette dated 6-9-2005 and, therefore, he proceeded to decide the writ petition by wrongly assuming that the appellant had filed writ petition questioning notification issued under Section 10 (1) of the Act.

Even otherwise, we are satisfied that the view taken by the learned Single Judge on the maintainability of appeal under Section 33 of the Act against notification issued under Section 10 (3) is erroneous and, therefore, dismissal of the writ petition filed by the appellant is liable to be set aside.

Section 33 (1) lays down that any person aggrieved by an order made by the competent authority under the Act, other than order made under Section 11 or Section 30 (1), can file an appeal before the prescribed authority. Section 10 postulates acquisition of excess land. Sub-section (1) thereof lays down that after service of the statement under Section 9 on the person concerned, the competent

authority shall issue a notification giving the particulars of the land held by such person in excess of the ceiling limit and give an opportunity to the interested persons to make claims. Sub-section (2) lays down that after considering the claims of the persons in the vacant land, the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit. Sub-section (3) postulates issue of notification declaring that the excess vacant land referred to in the notification published under sub-section (1) shall, with effect from the specified date, be deemed to have been acquired by the State Government. On publication of such notification, the excess land shall be deemed to have vested in the State Government absolutely free from all encumbrances. It is thus clear that while Section 10 (2) contemplates passing of an order by the competent authority, there is no such provision in sub-section (3). Therefore, an appeal cannot be filed against a declaration made under Section 10 (3) of the Act.

The term 'order' appearing in Section 33 has to be understood in its generic sense and, if so done, a notification issued under Section 10 (3) cannot be treated as one falling within the ambit of that term appearing in Section 33.

It is also apposite to mention that Sections 7 (2), (3), 8 (4), 11, 18, 20, 21 (2), 22, 23 (2), 27 (3) and 30 postulates making of orders by the competent authorities. All such orders except those made under Section 11 are appealable under Section 33. However, there is nothing in the language of Section 33 to even remotely suggest that an appeal can be filed against a declaration made under Section 10 (3) of the Act. Therefore, it must be held that the appellant cannot avail the remedy of appeal against notification dated 31-8-2005/
6-9-2005.

In view of the above discussion, we hold that the learned Single Judge committed an error by refusing to entertain the appellant's challenge to the declaration issued under Section
10 (3) of the Act on the ground of availability of alternative remedy.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. The writ petition of the appellant shall now be listed before the Single Bench for disposal on merits.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

April 24, 2006

svs